

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THOMAS JOHNSON, et al.,

Plaintiffs,

v.

COVENANT SECURITY SERVICES,
LTD., et al.,

Defendants.

CASE NO. C13-1983RAJ

ORDER

I. INTRODUCTION

This matter comes before the court on Plaintiff's motion for partial summary judgment regarding medical expenses. No one requested oral argument, and the court finds oral argument unnecessary. For the reasons stated herein, the court GRANTS the motion in part and DENIES it in part. Dkt. # 43.

II. DISCUSSION

This case concerns Plaintiff Thomas Johnson's claims for damages following a September 2010 collision between a freight train and the tractor-trailer that Mr. Johnson was driving. The motion before the court concerns only Mr. Johnson's medical care in the wake of the collision.

Mr. Johnson asks for partial summary judgment that certain medical care was reasonably necessary as a result of the collision and that the charges for that medical care were reasonable. Most of the medical care in question is described in hundreds of entries

1 on a 12-page chart attached to the October 2014 declaration of Dr. Steven Taylor, the
2 physician primarily responsible for Mr. Johnson's care in the wake of the accident. Dr.
3 Taylor opines that all of the treatment listed on the chart, treatment that begins shortly
4 after the accident and continues to mid-2014, was reasonably necessary as a result of the
5 accident.

6 Karina Vega, who has substantial experience in medical billing, opines that the
7 charges for the treatment on Dr. Taylor's chart are within the range of reasonable charges
8 for those services in the Puget Sound area. She also rendered the same opinion as to
9 charges for some services Mr. Johnson received that were not on Dr. Taylor's chart. Mr.
10 Johnson does not seek summary judgment that those additional charges were for
11 medically necessary treatment (although he may attempt to prove as much at trial).

12 Based on evidence from Dr. Taylor and Ms. Vega, Mr. Johnson seeks summary
13 judgment that the medical treatment on Dr. Taylor's chart was reasonably necessary as a
14 result of the collision, and that a total of just over \$201,000 was the reasonable cost of
15 that treatment. He also seeks summary judgment as to the reasonableness of the amount
16 of the charges about which Ms. Vega opined that were not on Dr. Taylor's chart. His
17 motion does not cover all of his medical treatment, and he reserves his right to convince
18 the jury that he is entitled to additional compensation for additional treatment, including
19 treatment he has received since Dr. Taylor's report.

20 On a motion for summary judgment, the court must draw all inferences from the
21 admissible evidence in the light most favorable to the non-moving party. *Addisu v. Fred*
22 *Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000). Summary judgment is appropriate
23 where there is no genuine issue of material fact and the moving party is entitled to
24 judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party must initially show
25 the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317,
26 323 (1986). The opposing party must then show a genuine issue of fact for trial.
27 *Matsushita Elect. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The

1 opposing party must present probative evidence to support its claim or defense. *Intel*
2 *Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). The
3 court defers to neither party in resolving purely legal questions. *See Bendixen v.*
4 *Standard Ins. Co.*, 185 F.3d 939, 942 (9th Cir. 1999).

5 The only Defendant to oppose Mr. Johnson's motion is Covenant Security
6 Services, Ltd., the entity responsible for controlling the railroad crossing at which the
7 collision occurred. Covenant's opposition is limited. The only evidence it offers is the
8 report of its own medical expert, Dr. Michael Battaglia. He examined Mr. Johnson in
9 August 2014, reviewed at least some of his medical records, and prepared a report. That
10 report does not directly address Dr. Taylor's assessment of medical records, and it is
11 wholly silent as to Ms. Vega's assessment of the reasonableness of the cost of Mr.
12 Johnson's treatment. Dr. Battaglia does opine, however, that any treatment that Mr.
13 Johnson received for his shoulder was not as a result of the collision. He also opines that
14 as of August 2014, Mr. Johnson required no further medical treatment. Battaglia Report
15 (Dkt. # 45) at 19-21. Covenant does almost nothing to explain how Dr. Battaglia's report
16 refutes Dr. Taylor's opinions.

17 The court agrees that to the extent that the 12-page chart describes shoulder
18 treatment, Dr. Battaglia's report suffices to create a genuine issue of material fact as to
19 whether the collision necessitated that treatment. But neither Covenant nor Dr. Battaglia
20 has done anything to identify which entries on that 12-page chart pertain to shoulder
21 treatment. The court will not do that job for the parties.

22 Dr. Battaglia's opinions about the need for future medical treatment are irrelevant
23 in this motion. Although Dr. Taylor believed that additional treatment after the date of
24 his declaration would be necessary, Mr. Johnson has not asked for summary judgment on
25 that issue. He asked for summary judgment only as to the treatment described in the 12-
26 page chart. That treatment all predates Dr. Battaglia's report.

1 As to Ms. Vega, Covenant offers no evidence to dispute her assessment as to the
2 reasonableness of the *cost* of Mr. Johnson's treatment, including the cost of treatment
3 beyond the scope of Dr. Taylor's chart.

4 Covenant also raises arguments as to a few of the entries on Dr. Taylor's chart. It
5 points out that a few thousand dollars of charges from pharmacies, detailed on the final
6 pages of the chart, are supported with nothing more than the description "Meds." The
7 court agrees that neither Dr. Taylor nor Ms. Vega has laid an adequate foundation for
8 opinions as to the necessity of those "Meds" or the reasonableness of their cost. The
9 court will not grant summary judgment as to those costs. Covenant also challenges a
10 series of six entries, dated July 31, 2013, on which the handwritten annotation "Double
11 Accounting" appears in Dr. Taylor's chart. Mr. Johnson offers no response as to the
12 meaning of that annotation, and the court declines to grant summary judgment as to those
13 six entries. Covenant challenges three entries on the first page of Dr. Taylor's chart,
14 because the descriptions of the services provided read "can't find notes," "Unknown,"
15 and "L&I shows 2 charges for \$120." Again, Mr. Johnson makes no attempt to explain
16 those entries, and the court declines to grant summary judgment as to them.

17 The court orders as follows:

- 18 1) The court grants summary judgment that every charge listed on the chart
19 attached to Ms. Vega's declaration is a reasonable cost for the medical service
20 provided. The only exception is her declaration as to the reasonable cost of
21 "meds," opinions for which she has not provided an adequate foundation.
- 22 2) The court grants summary judgment that every medical service described on
23 the chart attached to Dr. Taylor's declaration was reasonably necessary
24 treatment as a result of the collision at issue. The following entries on the chart
25 are exceptions to this ruling:
 - 26 a) entries bearing the description "Meds";

Richard A. Jones

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